

**United States Department of Labor
Employees' Compensation Appeals Board**

G.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Evanston, IL, Employer**

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**Docket No. 14-1923
Issued: January 22, 2015**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

ALEC J. KOROMILAS, Alternate Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 2, 2014 appellant, through his attorney, filed a timely appeal from a July 29, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an employment-related permanent impairment to a scheduled member or function of the body under 5 U.S.C. § 8107.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 2, 2011 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim (Form CA-1)² alleging that he sustained injuries on April 25, 2011 when he fell and hit his left knee while in the performance of duty. The reverse of the claim form indicated that he stopped working on April 25, 2011.

OWCP accepted the claim on June 13, 2011 for left knee contusion and left knee sprain. In a report dated June 20, 2011, Dr. C. Prodromos, an orthopedic surgeon, stated that appellant continued to have left knee pain. He stated that a magnetic resonance imaging (MRI) scan showed significant damage to the left meniscus internally, although the tear lines were not seen to extend to the surface. Dr. Prodromos diagnosed an apparent medial meniscus tear. The record contains an MRI scan report dated June 13, 2011 from Dr. Jani Surehka, a radiologist, who described the MRI scan findings and diagnosed medial meniscus mucinous degeneration without discoid tear.

On June 24, 2011 OWCP accepted a left knee medial meniscus tear. In a report dated July 18, 2011, Dr. Prodromos indicated that appellant underwent left knee surgery described as left knee micro-fracture medial femoral condyle. The postoperative diagnosis was left knee chondral defect medial femoral condyle. The record contains an MRI scan report dated December 21, 2011 from Dr. Brian Murphy, a radiologist, stating that no meniscal tear was present medially or laterally. Dr. Murphy indicated that no significant abnormalities were present.

By report dated February 3, 2012, Dr. Prodromos stated that appellant's knee continued to feel good, with full range of motion, and no limp. Appellant returned to work on February 6, 2012.

In a report dated August 11, 2012, Dr. Jessica Volsky, an osteopath, provided a history that a 2011 MRI scan had shown a meniscus tear and that appellant had undergone surgery in July 2011 to repair the meniscus as well as torn cartilage. She stated that he underwent physical therapy but continued to have left knee pain that prohibited him from heavy lifting or repetitive bending or squatting. Dr. Volsky diagnosed left knee contusion and sprain, and current medical meniscus tear. As to permanent impairment, she opined that under Table 16-3 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6th ed. 2008) appellant had an 8 percent impairment for the torn meniscus, 2 percent for contusion, 2 percent for a knee sprain, totaling 12 percent.

In a report dated October 8, 2012, Dr. David Garelick, an OWCP medical adviser, stated that, although a medial meniscus tear had been accepted, the record did not establish a medial meniscus tear. He noted that the July 18, 2011 surgery did not identify a tear or indicate that a meniscectomy was performed. Dr. Garelick stated that Dr. Volsky's opinion did not appear to be based on an accurate background, and noted the February 3, 2012 findings from Dr. Prodromos.

² A traumatic injury means a condition caused by events or incidents within a single workday or shift. 20 C.F.R. § 10.5(ee).

According to him, based on the resolution of symptoms, the physical examination, and diagnostic studies, there was no basis for a schedule award.

By decision dated March 7, 2013, OWCP found that appellant was not entitled to a schedule award. It found that the medical evidence was insufficient to establish an employment-related permanent impairment.

Appellant requested a hearing before an OWCP hearing representative. By decision dated June 11, 2013, the hearing representative found that the meniscal tear was not established by the record. The case was remanded for an additional report from the medical adviser with respect to Dr. Volsky's opinion as to contusion and sprain.

In a report dated June 24, 2013, Dr. Garelick reiterated his opinion that appellant did not have a permanent impairment under the A.M.A., *Guides*. He stated that he was not clear on what specific deficiencies in his prior report had been raised by the hearing representative. Dr. Garelick reviewed the medical evidence and stated that there was no objective evidence of a permanent impairment.

By decision dated November 14, 2013, OWCP found that appellant was not entitled to a schedule award based on the medical evidence. Appellant again requested a hearing before an OWCP hearing representative, which was held on May 8, 2014. Appellant's representative argued that Dr. Volsky's report was sufficient to establish a permanent impairment.

By decision dated July 29, 2014, the hearing representative affirmed the November 14, 2013 decision. She found that the medical evidence did not establish an employment-related permanent impairment.

LEGAL PRECEDENT

5 U.S.C. § 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁵

³ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁴ A. George Lampo, 45 ECAB 441 (1994).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6.6a (January 2010); Federal (FECA) Procedure, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

With respect to knee impairment, the A.M.A., *Guides* provides a regional grid at Table 16-3.⁶ The class of impairment Class of Diagnosis (CDX) is determined based on specific diagnosis, and then the default value for the identified CDX is determined. The default value (grade C) may be adjusted by using grade modifiers for Functional History (GMFH), Table 16-6, Physical Examination (GMPE) Table 16-7, and Clinical Studies (GMCS) Table 16-8. The adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷

ANALYSIS

In the present case, appellant seeks a schedule award and submitted an August 11, 2012 report from Dr. Volsky. With respect to a permanent impairment, Dr. Volsky referred to Table 16-3 and applied this table to the diagnoses of a left knee medial meniscus tear, contusion and a sprain. OWCP did accept these conditions as causally related to the April 25, 2011 employment injury. Dr. Volsky opined that appellant had a 12 percent permanent impairment to the left leg under Table 16-3.

The August 11, 2012 report is, however, of diminished probative value and is not sufficient to establish entitlement to a schedule award in this case. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.⁸ In her report, Dr. Volsky states that an MRI scan showed a medial meniscus tear and appellant had surgery to repair the meniscal tear. The MRI scan report from Dr. Surehka dated June 13, 2011 stated that there was degeneration “without discoid tear,” and Dr. Volsky does not provide any explanation for this discrepancy. Moreover, as noted by the medical adviser, the July 18, 2011 surgery report made no mention of a meniscal tear and failed to provide any indication that a meniscectomy was performed. In addition, Dr. Volsky provided a diagnosis of a “current” medial meniscus tear. The medical record indicated that a December 21, 2011 MRI scan clearly stated that no medial meniscus tear was found. Dr. Volsky does not discuss this evidence. The medical history provided by her was inaccurate and incomplete, diminishing the probative value of the opinion offered.

At the May 8, 2014 hearing appellant’s representative argued that OWCP had not formally rescinded acceptance of a medial meniscus tear. The acceptance of a meniscal tear by OWCP does not establish that Dr. Volsky had an accurate medical history with regard to a July 18, 2011 surgery. In addition, the June 11, 2013 hearing representative’s decision clearly found that the diagnosis of a meniscus tear was not established by the record. Appellant had an opportunity to submit additional medical evidence on the issue.

Under Table 16-3, a leg impairment may be based on a partial or total medial or lateral meniscectomy.⁹ Dr. Volsky did not provide an accurate history and did not provide a

⁶ A.M.A., *Guides* 509.

⁷ The net adjustment is up to +2 (grade E) or -2 (grade A).

⁸ See Patricia M. Mitchell, 48 ECAB 371 (1997); Cleopatra McDougal-Saddler, 47 ECAB 480 (1996).

⁹ A.M.A., *Guides* 509, Table 16-3.

rationalized opinion as to the proper application of Table 16-3 with respect to a meniscal injury in this case. Dr. Garelick supported his opinion that appellant did not have a meniscectomy and there was no permanent impairment in this regard.

As to the diagnosed conditions of contusion and sprain, the August 11, 2012 report from Dr. Volsky also fails to provide a rationalized medical opinion. Under Table 16-3, an impairment can be found for a soft tissue injury: “bursitis, plica, [history of] contusion or other soft tissue lesion.”¹⁰ A mild problem is based on “significant consistent palpatory findings and/or radiographic findings.” To the extent Dr. Volsky was applying this portion of Table 16-3, she provided no explanation. There were no findings regarding a continuing employment-related contusion or an explanation as to how appellant had an employment-related permanent impairment based on a contusion.

With respect to a left knee sprain, Table 16-3 refers to diagnostic criteria of “strain, tendonitis, or ruptured tendon” based on “palpatory findings and/or radiographic findings.”¹¹ Again, Dr. Volsky did not provide findings or otherwise provide a rationalized medical opinion on the issue. Dr. Garelick indicated that there was no objective evidence establishing a permanent impairment under the A.M.A., *Guides*.

The Board accordingly finds that the medical evidence is not sufficient to establish an employment-related permanent impairment to the left leg under the A.M.A., *Guides*. Appellant may request a schedule award based on evidence of a new exposure or medical evidence showing a progression of an employment-related condition resulting in permanent impairment. Based on the evidence of record, OWCP properly determined that he was not entitled to a schedule award for this left knee injury.

CONCLUSION

The Board finds that appellant has not established an employment-related permanent impairment to a scheduled member or function of the body under 5 U.S.C. § 8107.

¹⁰ *Id.*

¹¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 29, 2014 is affirmed.

Issued: January 22, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board